

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

L.T. TUCKER,

Plaintiff,

v.

AARON WENER, *et al.*,

Defendants.

CASE NO. 2:18-CV-20

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Greeley’s Report and Recommendation in this matter (ECF No. 80), Plaintiff’s Objections (ECF No. 81), and Defendants’ Responses (ECF Nos. 84, 85). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; Plaintiff's Objections; and Defendants' Responses. The Court finds the Magistrate Judge's Report and Recommendation, which recommends denying Plaintiff's motions for summary judgment on the federal claims (ECF Nos. 32, 61) and granting the defense motions for summary judgment on the federal claims (ECF Nos. 45, 59) factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. Plaintiff's objections do not address the Report and Recommendation in a persuasive way. Plaintiff objects that the Magistrate Judge applied erroneous legal standards and made improper credibility determinations. Plaintiff is simply mistaken. The Magistrate Judge accurately stated and applied the law. To the extent Plaintiff argues that he did not admit the underlying conduct that led to the misconduct ticket, the record belies the claim. Plaintiff himself acknowledges that when instructed to perform a task at work, he responded by stating "I aint [sic] going to be your slave, you are on some bullshit." (ECF No. 33, PageID.265.) None of Plaintiff's objections change the fundamental analysis. Defendants are entitled to summary judgment in their favor, for the very reasons the Report and Recommendation details.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 80) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Defendants' Motions for Summary Judgment (ECF Nos. 45 and 59) are **GRANTED**.
3. Plaintiff's Motions for Summary Judgment (ECF Nos. 32 and 61) are **DENIED**.
4. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v.*

Wigglesworth, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

Dated: March 27, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE